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FILED

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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CV 19 80 090 MISC

Case No.

SVK

IN RE UNOPPOSED APPLICATION OF WEST
FACE CAPITAL INC. FOR AN ORDER
GRANTING LEAVE TO ISSUE A
DOCUMENT SUBPOENA PURSUANT TO 28
U.S.C. § 1782

Applicant.

**WEST FACE CAPITAL INC.'S
UNOPPOSED APPLICATION FOR AN
ORDER GRANTING LEAVE TO ISSUE A
DOCUMENT SUBPOENA PURSUANT
TO 28 U.S.C. § 1782**

Assigned to:

Date: April 5, 2019

Time:

Place:

West Face Capital Inc. ("West Face"), by its attorneys, respectfully requests that this Court enter an order pursuant to 28 U.S.C. § 1782 granting West Face leave to issue the attached document subpoena to Google LLC ("Google") seeking documents relating to three Gmail email addresses. Counsel for Google has informed counsel for West Face that Google does not oppose this application for leave to issue the attached document subpoena, but reserves its rights to object on any applicable ground to any legal process that might be authorized by the Court. In

1 case number 18-mc-80179-LB, this Court previously granted West Face leave to issue a
2 document subpoena to Google related to different Gmail email addresses.

3 In support of its application, West Face has filed the accompanying Declaration of Jaime
4 A. Bartlett, which attaches an order, issued by the Court in Ontario, Canada, seeking
5 international judicial assistance in obtaining discovery from Google in the United States for use
6 in a civil lawsuit involving West Face pending in Canada, has filed the accompanying
7 Memorandum of Law, and further states as follows.
8

9 1. West Face is a defendant and counter-plaintiff in an action pending before the
10 Ontario Superior Court of Justice, Commercial List, in Toronto, Ontario, Canada, Court File No.
11 CV-17-587463-00CL (the “Canadian lawsuit”). *See* Ex. B¹ (West Face’s Amended Statement
12 of Defense and Counterclaim). In its counterclaim in the Canadian lawsuit, West Face alleges
13 that defendants engaged in a coordinated and systemic campaign to defame West Face, including
14 by making false and defamatory statements about West Face and its chief executive officer in
15 anonymous postings on various internet websites. Ex. B ¶¶ 129-74.
16

17 2. In an effort to directly establish that the defendants in the Canadian lawsuit were
18 responsible for the anonymous defamatory statements made about West Face on the various
19 internet websites, West Face filed on October 10, 2018 an application pursuant to Section 1782
20 for leave to issue a document subpoena to Google (which is headquartered in this District)
21 seeking documents relating to several Gmail email addresses. *See* Case No. 18-mc-80179-LB.
22 That application was supported by an order from the Canadian Court requesting the assistance of
23 this Court in obtaining documents from Google by the means ordinarily used in the United States
24 to obtain documents from a non-party. Ex. C. By order dated October 12, 2018, this Court
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28 ¹ All exhibits cited herein are attached to the Declaration of Jaime A. Bartlett filed herewith.

1 granted West Face's application for leave to issue a document subpoena to Google. *See* Ex. E.
2 West Face subsequently issued that document subpoena to Google. Google continues to produce
3 documents responsive to that subpoena, and the parties are continuing to confer regarding the
4 scope of the subpoena.

5
6 3. West Face recently obtained discovery in the Canadian lawsuit that identified
7 three additional Google email addresses that may be associated with the defamatory internet
8 websites whereon anonymous defamatory statements were made about West Face. Accordingly,
9 West Face now seeks to issue an additional document subpoena to Google regarding these three
10 newly-discovered email accounts. Counsel for Google has informed counsel for West Face that
11 Google does not oppose this application for leave to issue an additional document subpoena to
12 Google.

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14 4. The same reasons that supported the grant of West Face's application for leave to
15 issue a document subpoena to Google in case number 18-mc-80179-LB also support West Face's
16 application in this case to issue a document subpoena to Google relating to the three different
17 Gmail email addresses.

18
19 5. Under 28 U.S.C. § 1782, "the district court of the district in which a person
20 resides or is found may order him . . . to produce a document . . . for use in a proceeding in a
21 foreign or international tribunal." 28 U.S.C. § 1782. As further described in the accompanying
22 Memorandum of Law, Section 1782's three statutory requirements and four discretionary factors
23 are satisfied in this case.

24
25 6. Section 1782's three statutory requirements for judicial assistance are satisfied
26 here because (1) Google's principal place of business is in this District, (2) the documents sought
27 by West Face are for use in a civil court proceeding in Canada, and (3) the request is made by an
28

1 interested person, *i.e.*, West Face, and is further supported because the Canadian court issued an
2 order requesting judicial assistance from this Court. 28 U.S.C. § 1782(a); *see also In re*
3 *Premises Located at 840 140th Ave. NE, Bellevue Wash.*, 634 F.3d 557, 562 (9th Cir. 2011);
4 *IPCom GMBH & Co., KG v. Apple Inc.*, 61 F.Supp.3d 919, 922 (N.D. Cal. 2014).

5
6 7. If the statutory requirements are met, a district court may grant the discovery in its
7 discretion. The four discretionary factors are satisfied because (1) Google is not a party to the
8 civil lawsuit in Canada and Google may contend that it is outside of the Canadian court's
9 jurisdiction, (2) the Canadian court is receptive to this Court's assistance and to the discovery
10 requested, as evidenced by the previous order from the Canadian court requesting assistance
11 from this Court in obtaining document discovery from Google (which discovery this Court
12 granted), (3) this application is not made to circumvent Canadian proof-gathering restrictions,
13 and the discovery sought is consistent with U.S. discovery rules, and (4) the discovery sought is
14 not unduly burdensome or intrusive, and to the extent Google believes any particular request is
15 unduly burdensome, West Face is willing to meet and confer with Google in an effort to resolve
16 any such concerns.

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18 8. While 28 U.S.C. § 1782 allows for an *ex parte* application to conduct discovery,
19 *In re Application of Joint Stock Company Raiffeisenbank*, 2016 WL 6474224, at *3 (N.D. Cal.
20 Nov. 2, 2016), West Face notified Google of its intent to file this application and will serve a
21 copy of this application on Google. Counsel for Google has also stated that Google does not
22 oppose this application.

23
24 WHEREFORE, pursuant to 28 U.S.C. § 1782, West Face respectfully requests that the
25 Court enter an order in the form filed herewith granting West Face leave to issue a document
26 subpoena to Google in the form attached as Exhibit A, and retaining jurisdiction to address any
27
28

1 disputes that may arise over the enforcement of the subpoena.
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3

4 Date: April 8, 2019

Respectfully Submitted,

5 **WEST FACE CAPITAL INC.**

6 By: 
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21 *Attorneys for West Face Capital Inc.*
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CERTIFICATE OF SERVICE

I, Jaime A. Bartlett, hereby certify that I am causing a copy of the foregoing Memorandum of Law in Support of West Face Capital Inc.'s Application for an Order Granting Leave to Issue Document Subpoenas Pursuant to 28 U.S.C. § 1782 to be served by email on the following:

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